

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD L. KIGER,

Petitioner,

vs.

PAUL MORRISON, et al.,

Respondents.

Case No. 2:07-CV-00693-RCJ-(PAL)

ORDER

Petitioner has submitted a response (#12) to the Court's Order (#11) that he show cause why this action should not be dismissed as untimely.

Petitioner's argument is unpersuasive. He notes repeatedly that he can ask the state courts to correct an illegal sentence at any time. Response (#12), p. 2. See also Nev. Rev. Stat. § 176.555. However, Petitioner misstates how that state-court motion affects the federal one-year period of limitation in 28 U.S.C. § 2244(d). "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. § 2244(d)(2) (emphasis added). Petitioner argues that he had one year from August 16, 2006, when the Nevada Supreme Court's affirmed the denial of his motion to correct an illegal sentence, to commence this action. Response (#12), p. 2. The conclusion of a state-court post-conviction motion does not start the running of the period of limitation. The period started to run when Petitioner's judgment of conviction became final on December 20, 2004. Order (#11), p. 2. See also 28 U.S.C. § 2244(d)(1)(A). Petitioner has not shown that any of the other trigger dates in § 2244(d)(1) apply. The Court assumed

IT IS THEREFORE ORDERED that Petitioner's request for an evidentiary hearing (#9) is **DENIED** as moot.

Dated: September 4, 2007

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